IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Dr.Sidharth Sharma
Vs.
State and ors.

S.B. CIVIL WRIT PETITION NO.3760/2007.

Date of Order:- 20/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Sanjeev Prakash Sharma for petitioner.

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Reportable

The petitioner has prayed for mandamus to be issued to the respondents to declare the result of all in-service candidates for Pre-P.G. Examination after giving the benefit of their service which they rendered with the State Government by scaling/moderation of their marks in view

of Regulation 9 ignoring the system of negative marking as adopted by them and eventually if the petitioner is found eligible for admission, grant him admission to the Pre-Post Graduate Medical Study Course.

2) Learned counsel for the petitioner argued that the Hon'ble Supreme Court in **State of M.P. and others Vs. Gopal D.Tirthani and others : (2003) 7 SCC 83** held that though minimal departure can be made with regard to minimum qualifying marks prescribed by Regulation 9 of the Post Graduate Medical Examination Regulation, 2000. It was argued that common benchmark for qualifying the Pre-PG Examination can only be laid down if a

common Pre-PG Examination is held by the M.C.I. alone. However, if different examination procedure is laid down by different examining bodies, laying down 50% minimum passing marks may not be justified on correct interpretation of proviso to Regulation 9 supra. It was argued that interpretation of Regulation 9 including its proviso has resulted in causing great hardship to in-service candidates and, therefore, Medical Council of India ought to have re-examined as to lay down relaxed criteria for in-service candidates in view of the observations made by the Hon’ble Supreme Court in State of MP Vs. Gopal D.Tirthani, supra. The manifest intention of the Hon’ble Supreme

Court in Gopal D.Tirthani was to implement relaxation of the minimum pass marks from 50% to 40% in the case of SC/ST and OBC also to the in-service category candidates who formed the separate class which having not been done, the impugned action of the respondents is liable to be quashed and set-aside. Besides, petitioner had to suffer on account of system of negative marking adopted by the respondent-University. If there would have been no negative marking, the petitioner would have certainly secured the benchmark of 50%. As a result of the negative marking, atleast 65 seats remained vacant in in-service general category because the candidates could not cross that limit.

3) I have given my earnest consideration to the submissions made by the learned counsel for the petitioner and perused the material available on record.

4) The question whether the in-service candidates are entitled to age relaxation in the matter of qualifying marks laid down in Regulation 9 supra at par with that of SC, ST and OBC was referred to the Full Court of this Court. The Full Court, in **DBCSA(W) No.503 of 2002 (Dr.Ajay Kumar Srivastava Vs. State of Rajasthan and ors.)** held that Regulation framed by the Medical Council of India had only a persuasive value and were not binding on the State Government. It further held that the State had the power to prescribe a

lower percentage of marks for in-service candidates. It declared that Regulation 9 did not apply to in-service candidates. However, the Full Bench held that the minimum qualifying marks for in-service candidates could not have a wide disparity with the marks prescribed for the general category candidates. It directed that it shall be open to the State Government to go ahead with the admission of in-service candidates to the postgraduate courses on the basis of such percentage of qualifying marks which may be lower than 50 per cent but not below 40 per cent, which is the minimum eligibility percentage prescribed for the reserved category candidates. The judgment of the Full Bench was however

challenged before the Hon'ble Supreme Court but in the meantime as a result of implementation of the judgment of the Full Bench, 75 students from in-service candidates who had secured less than 50% but more than 40% marks were selected for admission and were in fact admitted on the basis of undertaking furnished by them to the effect that their admission shall be subject to the final judgment of the Supreme Court whenever pronounced. The Hon'ble Supreme Court allowed the appeals arising out of the aforesaid judgment which is reported in **(2003) 8 SCC 69 : Harish Verma and others Vs. Ajay Srivastava and another.** It ruled that decision of the High Court holding holding

minimum marks prescribed in the first priviso to Regulation 9 of the Postgraduate Medical Education Regulations, 2000 to be relaxable by the State Government and to be not applicable to in-service doctors, was not sustainable in law. In doing so, Hon'ble Supreme Court relied on the judgments in **Preeti Srivastava (Dr.) Vs. State of M.P. (1999) 7 SCC 120, State of M.P. Vs. Gopal D.Tirthani : (2003) 7 SCC 83 and Ajay Kumar Singh Vs. State of Bihar : (1994) 4 SCC 401** and finally held that the view taken by the Full Bench was contrary to the majority opinion in Dr.Preeti Srivastava. If the State has a case for making a departure from the standards laid

down by the Medical Council of India or for carrying out an exception in favour of any identifiable class of persons, then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification before the Medical Council of India. It was further observed that subject to securing the minimum qualifying marks if the in-service candidates formulate a class by themselves for whom a separate channel of entry has been carved out within the group, there may be scope for assigning weightage for the rural service rendered, for the purpose of determining the order of merit *inter-se*, but such weightage cannot be utilized for

the purpose of relaxing the condition as to minimum qualifying marks as prescribed by the Medical Council of India. Thus, observing as above, the Hon'ble Supreme Court set-aside the judgment of the Full Bench rendered in DBCSA(W) No.503/2002 (Dr.Ajay Kumar Srivastava Vs. State of Rajasthan and ors.). As a consequence, admissions granted to such of the in-service candidates who had secured marks less than the minimum prescribed by Regulation 9 framed by the Medical Council of India were struck down and set-aside.

5) The controversy raised in this writ petition is thus squarely covered by the decision of the Hon'ble Supreme Court rendered in Harish Verma, supra and,

therefore, the contentions raised by the learned counsel to the said effect are liable to be rejected and accordingly rejected.

6) As for relaxation in the minimum qualifying marks, it is for the petitioner as held by the Hon'ble Supreme Court in Harish Verma, supra to represent the Medical Council of India as also to the State Government giving details and datas of the previous years so as to demonstrate as to in what manner the purpose for which 50% of the seats of Pre-PG Examination are ear-marked for in-service candidates, is not being fulfilled and seek the remedy therefor. The State Government on its part may also examine the grievance of

the petitioner and if persuaded thereby, may forward its view thereupon to the Medical Council of India.

7) Adverting now to the question of negative marking, this Court in exercise of its power of judicial review under article 226 of the Constitution cannot by issue of writ of mandamus, call upon the respondents to frame their scheme of examination in a particular manner or abandon part of the examination scheme which has been in vogue for sometime. At the same time, however, petitioners are set at liberty to make a detailed representation to the State Government by giving the datas of the past examinations on the basis of which they want the State Government and/or the

University to give the system of negative marking. If any such representation is made, the State Government shall consider the same in consultation with the Medical Council of India and the Rajasthan University of Health Sciences and take a final view in the matter as expeditiously as possible but in no case later than the notification of the Pre-P.G. Examination, 2008.

The writ petition is accordingly dismissed though with the aforesaid observations.

(MOHAMMAD RAFIQ), J.

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